

REMARKS

This is intended as a full and complete response to the Final Office Action dated February 25, 2004, having a shortened statutory period for response set to expire on May 25, 2004.

Claims 1, 3, 20, 26-27, 29, 31, and 33 are amended in the Application.

Claims 1-35 are pending in the Application.

Applicants appreciate the Examiner's acceptance of the amendments filed on November 21, 2003, and the subsequent withdrawal of the 35 USC 112 and 35 USC 103(c) rejections.

I. Claim Objections

The Office Action objected to Claim 20 and Claim 33 because of informalities.

Applicants have amended Claim 20 to change the term "menthyl" to "menthyl lauryl". Applicants have amended Claim 33 to correct the spelling of the term "polysorbitol".

Applicants believe no new matter has been added with these amendments. Reconsideration of Claim 20 and Claim 33 is respectfully requested.

II. Double Patenting

The Final Office Action stated that Claims 1-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-17 of US Patent Serial No 6,348,501. The rejection is maintained for the reasons stated in a previous Office Action dated November 6, 2002.

Applicant's Response to the Office Action dated November 6, 2002, stated that the Terminal Disclaimer was included. Applicant hereby submits a copy of the Terminal Disclaimer

included in the previous Response to overcome the double patenting obviousness-type rejection. The Terminal Disclaimer with associated fee is located in Attachment A.

Reconsideration of the claims is respectfully requested in view of this amendment.

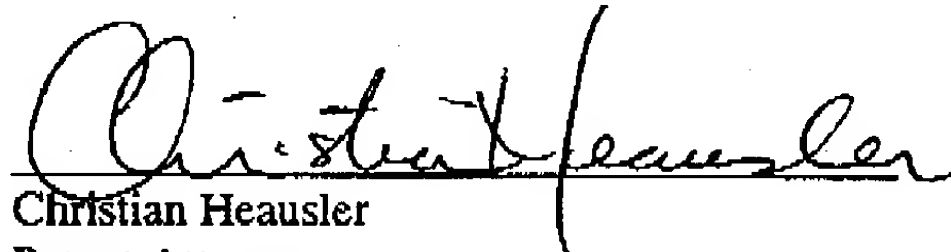
Applicant hereby amended independent claims 1, 3, 26, 27, 29, 31, and 33 to change the term "capsaicin" to "encapsulated capsaicin" as suggested by the Examiner in order to advance prosecution of the Application. Applicant believes no new matter has been added with these amendments.

Reconsideration of this Application is respectfully requested.

Respectfully submitted,

Date:

3/5/04



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